



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/165948

PRELIMINARY RECITALS

Pursuant to a petition filed May 11, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Columbia County Health & Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on July 06, 2015, at Montello, Wisconsin. At the request of petitioner, hearings set for June 2, 2015 and July 1, 2015 were rescheduled.

The issues for determination are: a) whether the petitioner's appeal of his October 17, 2014 FoodShare (FS) tax intercept is timely; and b) whether the petitioner had a prior opportunity for a hearing on the issue of whether the Department correctly sought recovery of a FS overpayment to collect overpayments of FoodShare benefits during the period of July 10, 2011 to March 31, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Monica Johnson, ESS
Columbia County Health & Human Services
2652 Murphy Rd
PO Box 136
Portage, WI 53901

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marquette County who resides with his girlfriend, [REDACTED], and was a member of her FoodShare (FS) household during the FS overpayment period of July 10, 2011 to March 31, 2014. The petitioner and [REDACTED] have two children in common. [REDACTED] was the primary person in this FS household.
2. On May 7, 2014, the county agency issued Notices of Food Stamp Overissuance to the petitioner and separate notices to [REDACTED] at their correct address of record that it had opened FS overpayment claims. Those notices indicated that the county agency was seeking repayment of \$21,699.33 in FS benefit overpayments during the period from July 10, 2011 through March, 2014, due to [REDACTED]'s failure to timely report accurate household composition ([REDACTED] residing in her FS household) and his income. See Exhibit A1. Those FS overissuance notices to petitioner were not returned as undeliverable.
3. The county agency sent to the petitioner a repayment agreement for these FS overpayments on June 3, 2014. This was not signed nor returned by petitioner. See Exhibit A2.
4. Monthly FS recoupments were initiated and continued.
5. The county agency sent Dunning notices to each of the parties regarding these FS overpayments. Dunning notices were sent to the petitioner on July 2, 2014, August 4, 2014, and September 3, 2014. See Exhibit A3.
6. Neither the petitioner nor [REDACTED] filed any timely appeal to the Division of Hearings and Appeals (DHA) regarding any of their May 7, 2014 FS overpayment notices.
7. The Department's Public Assistance Collection Unit (PACU) sent an October 17, 2014 FS tax intercept notice to the petitioner at his correct address of record notifying him that the remaining unpaid FS overpayment of \$21,700 would be recovered through interception of his state or federal income taxes or credits. That October 17, 2014 notice stated that the remaining \$21,700 FS overissuance would be forwarded to the Department of Revenue for setoff against any state tax refund and that petitioner must file an appeal to the Division of Hearings and Appeals (DHA) **within 30 days** of the date of that notice to have a timely appeal. See Exhibit A4. That FS Tax Intercept Notice was not returned as undeliverable.
8. The Petitioner filed his fair hearing request by telephone with the Division of Hearings and Appeals (DHA) on May 11, 2015. See Exhibit A5.
9. The petitioner was unable to establish that he had timely filed any FS overpayment or tax intercept appeal to DHA prior to May 11, 2015.
10. As of July 6, 2015 hearing date, the remaining amount of petitioner's FS overpayment was reduced from \$21,700 to \$16,748.33.
11. During the July 6, 2015 hearing, petitioner admitted that he and [REDACTED] have resided at the same address of record for the past five years.

DISCUSSION

Wisconsin Statute section 46.254 provides that the department shall, at least annually, certify to the Department of Revenue amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, overpayment of AFDC and medical assistance payments made incorrectly. The department must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at § 46.254(3).

An Administrative Law Judge (ALJ) can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning a state tax refund intercept **must be filed within 30 days of the date of the notice of the tax intercept** pursuant to sec. 227.44 Wis. Stats. In this case, the petitioner's state tax intercept appeal was filed with the Division of Hearings and Appeals on May 11, 2015, which is more than **six (6) months** after the date of the October 17, 2014 FS tax intercept notice which was sent to the petitioner.

During the July 6, 2015 hearing, petitioner alleged in vague terms that he did not receive any of the county agency's FS overpayment notices or the October 17, 2014 FS tax intercept notice. The petitioner's testimony was lacking in credibility for several reasons. First, petitioner admitted that he has resided with [REDACTED] [REDACTED] at their [REDACTED] address for the past five years, and did not allege any problems with their mail delivery. Second, the petitioner was unable to refute that all the notices were correctly sent to the correct address for the FS casehead (petitioner's girlfriend and the mother of his two children, [REDACTED] [REDACTED]) and to him at the same address. The FS overpayment and FS tax intercept notices were all sent to [REDACTED] with a separate notice sent to the petitioner.

During the hearing, petitioner argued unconvincingly that he was not aware of the FS overpayment notices or the FS tax intercept notice because [REDACTED] received the mail (including mail in his name) and illegally hid that mail from him. However, petitioner admitted that despite this alleged "theft" of his mail, he continued to reside with [REDACTED] even as of the date of the July 6, 2015 hearing. When asked by this ALJ whether he confronted [REDACTED] about this alleged confiscation or theft of his mail, he admitted incredibly that he never asked her about taking his mail. His testimony is simply not believable. Moreover, the petitioner did not have [REDACTED] [REDACTED] present at the hearing to testify and answer questions, to support or corroborate any of his allegations.

The petitioner was unable to provide any specific, credible or reliable evidence in the record that he did not timely receive those notices. He also was unable to refute that [REDACTED] [REDACTED] did not receive those notices. Furthermore, during the overpayment period, [REDACTED] and petitioner should have been aware that that her FS overpayments was being recouped as about \$5,000 of the total \$21,700 overpayment was recovered by the time of the July 6, 2015 hearing. See Finding of Fact #10 above.

The petitioner did not establish any problems with his mail delivery, and was unable to provide any good cause for his failure to file his tax intercept appeal at DHA until May 11, 2015. There is no evidence in the record that the October 17, 2014 tax intercept notice was returned as undeliverable. As a result, the petitioner filed his FS tax intercept appeal on May 11, 2015, which is more than six months after the October 17, 2014 tax intercept notice was mailed to him. Therefore, DHA has no jurisdiction regarding the petitioner's issue of whether the Department correctly imposed a October 17, 2014 FS tax intercept against the petitioner's taxes, as his appeal is untimely.

However, even if the petitioner's appeal had been timely, Wis. Stat. § 49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of Food Stamps, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Workforce Development must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. Id. at § 49.85(3).

The hearing right is described in Wis. Stat. § 49.85(4) (b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... **may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.**

(Emphasis added)

As noted in Findings of Fact #1 - #6 above, the petitioner (and [REDACTED]) had the opportunity for a prior hearing on the merits of the FS overpayment but petitioner and [REDACTED] failed to file any timely appeal to DHA.

In addition, petitioner appears to be questioning why the FS overpayment was seeking recovery from him when [REDACTED] was the FS casehead during the period of July 10, 2011 to March 31, 2014. The food stamp regulations permit the recovery of an overpayment of food stamps from **any adult person who was a member of the overpaid food stamp household.** Based upon the evidence in the hearing record, the petitioner was an adult member of the FS household of [REDACTED] which was overpaid. 7 C.F.R. § 273.18(a), provides in pertinent part:

Establishing claims against households. All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State agency shall establish a claim against...any household which contains an adult member of another household that received more food stamp benefits than it was entitled to receive.

(Emphasis added).

As a result, the petitioner is jointly and severally liable along with [REDACTED] for the FS tax intercept. The petitioner did not dispute the calculation of the FS original overpayment amount of \$21,700, and did not dispute that he had not filed a timely appeal of that FS overpayment. Petitioner also did not dispute that the remaining amount of the FS overpayment was \$16,748.33 as of the July 6, 2015 hearing date. He only alleged unpersuasively that he had not received the FS overpayment and tax intercept notices.

In addition, there have been no issues raised regarding the accuracy of the tax intercept calculation, which is the subject of this review, I must conclude that the interception action is appropriate. Based upon the above, the determination by the county agency that petitioner was overpaid is affirmed. The Department is required to recover all overpayments of public assistance benefits and the state must take all reasonable steps necessary to promptly correct any overpayment.). *See also*, Wis. Stat. § 49.195(3) (...the department shall promptly recover all overpayments made under s. 49.19....); 7 C.F.R. § 273.18(a) (“...The State agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive....), Wis. Stat. § 49.125(1). The Department may utilize tax intercept as a means of recovering the overpayment. *See*, Wis. Stat. § 46.85.

CONCLUSIONS OF LAW

1. There is no jurisdiction regarding the issue of whether the Department correctly imposed an October 17, 2014 FS tax intercept against the petitioner's taxes, as the petitioner's appeal is untimely.
2. The Department may continue to certify the remaining FS overpayment amount due, and may continue to proceed with the action to intercept the petitioner's income tax refund if the remaining FS overpayment has not already been fully recouped from petitioner and/or [REDACTED].

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby Dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

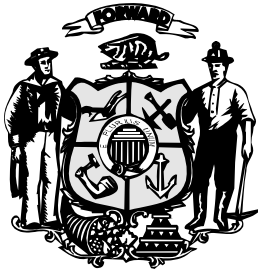
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 13th day of July, 2015

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 13, 2015.

Columbia County Health & Human Services
Public Assistance Collection Unit